

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, February 4, 1982 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, County Office Building, Rockville, Maryland, at 3:00 P.M. on Thursday, February 4, 1982.

PRESENT

Neal Potter, President
Ruth Spector
Scott Fosler

Michael L. Gudis, Vice President
Rose Crenca
David L. Scull
Esther P. Gelman

The President in the Chair.

Re. Worksession - Legislative Bill No.
71-81, Collective Bargaining,
Police Officers

The County Council met in worksession to discuss Legislative Bill No. 71-81, Collective Bargaining/Police Officers, with Fraternal Order of Police (FOP) Counsels Alan Katz and George Driesen; Assistant County Attorney Suzanne Levin; Executive Branch staff member Edward Rovner and Executive Branch Special Counsel Robert Hillman; Council Legislative Counsel David Frankel; Council Staff Director Robert McDonell; County Personnel Director Clinton Hillard; and others.

The Council reviewed Draft #2 of the bill, dated January 25, 1982, as amended by the County Executive. The Council made no objection to amendment of paragraph (13) on page 4, lines 17 through 31, amending the bill as follows:
An employee of the police department, as defined in Section 33-76 of this Chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, title "Police Labor Relations" of this Chapter.

Referring to page 6 of the subject bill, Mr. Frankel recommended that paragraph (c), lines 24 through 28, be deleted, as follows: (c) The provisions of this Section shall not apply to an employee of the police department, as defined in Section 33-76 of this chapter, who is represented by a certified employee organization pursuant to the provisions of Article V, Title "Police Labor Relations" of this chapter.

Mr. Rovner advised the Council that the Executive's position is that employees represented by collective bargaining representatives will be negotiating wages and should not be covered by an automatic cost-of-living (COL) increase that is applied to merit system employees. There should be no ceiling or floor regarding wages when negotiations begin. Police officers may get more, or less, but should not be limited by the wages of other employees.

Mr. Frankel expressed the opinion that the proposed amendment exempting police officers from an automatic COL anticipates that this provision may, or may not, appear in a collective bargaining agreement. If an agreement is negotiated that provides for a different COL increase, that would be the appropriate time to change the existing law, in his opinion.

Mr. Katz advised the Council that he discussed the subject issue with the County Executive who is concerned that police employees be assured of receiving a COL increase. He said that the provisions for an automatic increase would not apply to employees who are represented by a certified employee organization. If there is no such organization, the 75% of CPI COL increase would apply to police officers.

Without objection, the Council did not delete paragraph (c), lines 24 through 28 on page 6 of Bill No. 71-81, which would assure police officers a COL increase when not represented by a certified employee organization.

The Council considered an amendment proposed by the County Executive on page 7 of the bill, lines 15 and 16, adding collective bargaining over wages, hours, and other items and conditions of employment which were not in the original bill.

Without objection, the Council accepted the County Executive's proposed amendment on page 7 of the bill, lines 15 and 16, as follows: To that end, it is in the public interest that police employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice or to refrain therefrom;

Mr. Frankel recommended that on page 7, line 20, after "government," the rest of the sentence be deleted inasmuch as it implies that the Council will appropriate all funds and enact any legislation required by a collective bargaining agreement.

Mr. Hillman advised the Council that the Executive recommends that the phrase on page 7, line 20, "and furthermore, that agreements reached through collective bargaining be implemented" be retained in the bill. He said the bill proposes that the Council indicate to the bargaining representatives any problems it has in order to arrive at a contract everyone agrees will be implemented.

It does not bind the Council, but provides that the contract will be implemented if agreement is reached. He explained procedures whereby the Executive would negotiate with bargaining representatives and submit to the Council, as part of the budget, what is needed to implement the contract. The contract is not binding on the Council; however, the Council would appropriate funds and enact legislation to implement the contract or it could declare its intent and refer the contract back to the Executive, with its reasons, and ask that portions of the contract be renegotiated for further consideration of the Council.

Councilwoman Gelman commented that the proposed collective bargaining agreement is different from other Executive programs funded by the Council because it is a contract and the Executive must spend the funds as provided in the contract.

Mr. Rovner stated that on page 23 of the subject bill, line 15, it is provided that any agreement shall provide either for automatic reduction or elimination of such conditional wage and/or benefit adjustments if the Council fails to take action, funds are not appropriated, or a lesser amount is appropriated. He stated that any collective bargaining agreement would not be final until the Council takes action.

In response to Councilwoman Gelman's inquiry, Mr. Hillman stated that the collective bargaining agreement would be made public after it is signed by the Executive and ratified by the FOP, which would be before it goes to the Council as part of the Executive's budget submission.

President Potter reviewed page 23 of the subject bill and said he believes it meets the Council's intent in that the contract is not final until action is taken by the Council to fund the contract. Lines 15 through 19 represent a contingency clause in case the Council does not take action that would eliminate conditional wage and/or benefit adjustments and that the FOP could not sue for implementation of a contract which the Council did not write.

Mr. Scull requested clarification of "other terms and conditions," on page 7, line 15. Mr. Hillman referred to pages 18 and 19 of the bill wherein the issues that will be subjects of collective bargaining are listed and indicated that those listed on page 19 may be subjects of bargaining. He noted that the first line on page 19 is in error and should be amended to insert, may be for [shall not] after "subjects." In addition, he said that on line 24 of page 20, paragraph (1), [Notwithstanding any other provision of this law,] should be deleted. This will allow those issues listed on page 19 to be collectively bargained for if all parties agree.

Mr. Driesen referred to paragraph (c), Employer's Rights, beginning at line 16 on page 19 of the subject bill, and said there should be full arbitration rights on these issues. He referred to similar legislation in other states that does not provide for consideration of items that cannot be arbitrated. He believes uniforms, vehicles and equipment should be a part of arbitration, as they are in other states.

During a discussion regarding police officer assignments, hours and supervision, and police officer equipment, Mr. Hillman pointed out that the County must be free to direct, supervise and discipline or discharge its employees according to applicable law in order to carry out its responsibility for the health and safety of County citizens. The County has delegated authority to the Chief of Police to make these decisions. Mr. Hillman noted that employee promotions are handled in accordance with the County's Personnel Regulations which must be approved by the Council. In order to make any changes in the personnel regulations, the Council would have to enact legislation. In the event personnel changes are proposed under the bargaining agreement, the County Executive would have to prepare legislation in accordance with the contract to be submitted to the Council for approval.

Councilwoman Crenca expressed concern regarding the rights of other employees whose salaries are funded by the Council, and who will probably seek collective bargaining, and her responsibility to be sure that an across-the-board comparison is made of wages and benefits in the light of fair play.

Mr. Driesen stated that there was a Charter amendment mandating collective bargaining for police officers; therefore, it is the obligation of the Council to pass a workable collective bargaining law. He noted that in many other jurisdictions there are separate collective bargaining agreements covering police and other uniformed services. He believes it is appropriate to focus on how bargaining is going to work efficiently for police officers.

Councilwoman Crenca said that the term "workable" causes her concern. She is concerned as to whether the County has enough experience in this field to know what is likely to work. She feels sure that all Councilmembers are interested in providing a "workable" agreement and suggested that the Council may need better guidelines to make decisions.

Councilman Fosler referred to page 7 of the subject bill, line 15, and expressed concern regarding the phrase "and other terms and conditions of employment"; this is very complicated and could undermine the whole process. He asked whether there is any experience with respect to the inclusion of items that will not be subject to bargaining in the agreement. Mr. Hillman responded that he

believes experience has shown it is not practical to have an arbitrator make decisions regarding assignments for police officers. This issue is listed in the agreement under discussion as a permissive subject.

The agreement is proposing that police officers may be able to discuss their problems regarding assignments and hours with possible positive results for everyone. Under the Executive's proposal, the Executive could refuse bargaining on this issue and his decision could not be appealed. Mr. Hillman said there will undoubtedly be some question about whether a subject is mandatory or permissible for bargaining. This issue is covered on page 21, paragraph (2), indicating that a petition from either party shall be submitted to the permanent umpire who shall resolve the dispute as soon as possible. The decision of the umpire shall be binding on all parties.

In response to Councilman Fosler's inquiry regarding which issues the FOP believes should be negotiated, Mr. Driesen said he feels it is important that the Executive be able to bargain about any issue. He feels strongly also that all of the issues listed for permissible arbitration are invitations to litigation, as has been proven elsewhere in the country. He commented that he gave Councilman Gudis information regarding ten states where there are no restrictions in collective bargaining contracts. He believes that if all parties are willing to sit down and negotiate, usually there is mutual agreement. If not, the issue should go to arbitration. He believes it is a serious mistake to restrict the issues that can be negotiated by the Executive.

Mr. Rovner said that the Executive's proposal is an economic approach in some respects. The Executive has taken this approach because he believes that there are certain matters with regard to police that should not be decided by a neutral person.

During a discussion of police officers' personal patrol vehicles (PPVs) which officers are allowed to take home, and are listed as an issue for collective bargaining, Councilwoman Gelman said she does not understand why PPVs were removed from police equipment and listed as a separate negotiable item. These cars were provided to police officers in order to create more presence in neighborhoods and act as a deterrent to crime. She said PPVs should not be considered in the same category as vacations and should be considered as part of a police officer's equipment. She believes that the County's PPV program has been of great benefit.

Mr. Rovner pointed out that, if the County Executive decided to change the PPV policy, under the proposed legislation he would negotiate on this item.

Mr. Driesen expressed the opinion that PPVs apply, technically, as affecting working conditions and should be a bargaining issue.

Referring to discussions regarding PPVs over the last several years, President Potter stated that it is both a public and an employee benefit and he does not feel it should be negotiable.

Councilman Gudis pointed out that, although PPV's are shown in the proposed legislation in the same group as fringe benefits, they are not a fringe benefit. The County sees PPV's as a tool that will help the Police be more effective.

President Potter directed the Council's attention to page 7 of the subject bill, Sec. 33-75, Declaration of Policy. After discussion, the Council made no change in the amended language proposed by the County Executive.

The Council reviewed Sec. 33-72, Definitions, on pages 8 and 9 of the proposed bill. Mr. Hillman acknowledged amendments proposed by Mr. Frankel and said he believes that another worksession will be required in view of the fact that the issue of which items should be negotiable, and which should not, needs more study.

With respect to the amendment proposed by Mr. Frankel, on page 8 of the subject bill, after line 18, that the definition of a certified representative be included, Mr. Hillman said he has no objection to the amendment although it is explained elsewhere in the subject bill.

Mr. Frankel recommended an amendment on page 8, line 26, to include the definition of "unit," meaning all employees, for clarification purposes.

Without objection, the Council agreed that the Definition Section be amended to include the definition of 'certified representative' and 'unit', as set forth above.

Without objection, the Council deferred discussion of Mr. Frankel's amendments for pages 9 and 10, inasmuch as they are related to the issue regarding the scope of bargaining issues, which will be discussed at a later time.

The Council discussed with Mr. Frankel his amendment to add on page 11, line 29, after "affiliation," other than political. Mr. Frankel said he is concerned that there may be some speculation if the umpire is of the

same party as the Council. Mr. Hillman pointed out that the umpire would be appointed by the Executive and confirmed by the Council. Councilwoman Gelman commented that she does not feel the umpire's political affiliation would be relevant unless the person is particularly active in politics.

Without objection, the Council amended proposed Bill No. 71-81 on page 11, line 29, to insert other than political after "affiliation."

Mr. Frankel proposed an amendment on page 12 of the subject bill and recommended that lines 16 and 17 be deleted entirely because the language implies the employer is giving the certified representative the exclusive right to represent an employee in a grievance. There may be a situation when an employee would prefer private counsel.

Mr. Hillman objected strongly to the proposed deletion and said he does not believe a person outside the contractual agreement should be allowed to handle grievances. He noted that the subject legislation pertains to grievances under the collective bargaining agreement only.

Mr. Driesen agreed with Mr. Hillman that the process for handling grievances under the contract agreement must be exclusive unless it is an issue outside the scope of the agreement. Allowing a private counsel to handle contract grievances could weaken the process.

The Council took no action to approve the amendment to delete lines 16 and 17 on page 12 of the subject bill.

Mr. Frankel suggested that the word "employees" be deleted on line 15 and that the word "unit" be inserted therefor.

Without objection, the Council amended line 15 of page 12 to delete [employees] and insert therefor, unit.

The Council considered an amendment to delete "A certified representative" on page 12, line 18, of the subject bill and to insert therefor, "Where certified, an employee organization...." Mr. Frankel said that this technical clarification is needed in paragraph (c) to take into consideration that there may not be a certified representative, or, that an employee may decide to have no representative.

The Council took no action to approve the amendment proposed for line 18 on page 12 of the subject bill, as outlined above.

Without objection, the Council amended the subject bill on page 12, line 20, to delete [unit] after "all," to eliminate a redundancy.

Without objection, the Council amended page 13 of the subject bill, to delete lines 6, 7, and 8, (paragraph (a), entirely and to insert therefor, The certification or decertification of an employee organization as the unit's representative for purposes of collective bargaining shall be initiated in accordance with the following procedures:," for purposes of clarification.

Without objection, the Council amended page 15 of the subject bill on line 10, to delete [may] after "unit," and insert therefor, shall for technical clarification.

The Council took no action to amend lines 2 and 10 on page 14 of the subject bill to delete the phrase, "the majority of the," as recommended by Mr. Frankel.

Mr. Frankel recommended a technical amendment to line 15, on page 14, to delete [Therefore] and to insert therefor, "Except as provided for below," to clarify the text of the bill with respect to petitions and to link paragraphs (4) and (5) together.

Mr. Hillman recommended that line 15 on page 14 not be amended, and explained the reasons for the dates shown in the proposed bill, in relation to elections and the periods when a petition may be barred.

The Council took no action to amend line 15 on page 14 of the subject legislation.

As recommended by Mr. Frankel, the Council agreed that lines 19 through 29, paragraph (c), on page 14 of the subject bill, are not clear and deferred further discussion. Mr. Frankel will try to develop clearer language and report back to the Council at a later time.

Without objection, the Council amended page 15 on line 13 to delete [of] after "election," and to insert therefor, by, for clarification.

After discussion, the Council did not approve the recommended deletion of [eligible] after "all," on line 13 of page 15.

Without objection, the Council amended page 16 on line 15, to insert after "the," challenge, for clarification, as recommended by Mr. Frankel.

The Council considered an amendment to line 2 of page 17, with respect to run-off elections, to insert after "conducted," in the same manner as the original election, for technical clarification.

Mr. Hillman opposed the amendment suggested on line 2 of page 17 of the subject legislation, providing that the umpire has full discretion regarding election procedures.

The Council took no action to amend line 2 of page 17 of the proposed bill.


Councilman Fosler suggested that the Executive staff meet with Mr. Frankel and FOP representatives to prepare amendments of a technical nature, and that the Council discuss any amendments of a substantive nature at the next meeting.

The Council agreed with Mr. Fosler's recommendation and so instructed the staff.

The Council scheduled another worksession on Legislative Bill No. 71-81, Collective Bargaining/Police Officers, for Monday, March 8, 1982, at 1:00 P.M.

The meeting adjourned at 6:00 P.M.

ATTEST:


Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland

